IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.373 OF 1999

1. Smt. Tabita A.M.C.
   Rodrigues, major,

2. Shri Agostinho S.S.A.F.
   Dias, major,

3. Shri Camilo C. Luis,
   major,

4. Smt. Supriya S.Satoskar,
   major,
   all working as Pharmacists
   Hospital Pharmacy,
   Goa Medical College,
   Bambolim, Goa.

5. Shri Mahendra D. Naik,
   major, Pharmacist,
   T.B. & Chest Diseases
   Department, St. Inez,
   Panaji, Goa. ... Petitioners.

versus

1. State of Goa,
   through its Chief Secretary,
   Secretariat, Panaji, Goa.

2. The Dean,
   Goa Medical College,
   Bambolim, Goa.

3. Shri Alvaro Dias,
   major, Asst.Pharmaceutical
   Chemist, Goa Medical College,
   Bambolim, Goa.

4. Smt. Ashalata Naique Dessai,
   major, Asst. Pharmaceutical
   Chemist, Goa Medical College,
   Bambolim, Goa. Respondents.

Mrs. A. A. Agni, Advocate for the Petitioners.

Mr. P. A. Kamat, Additional Government Advocate for the State.

CORAM: D. G. DESHPANDE &
P. V. HARDAS, JJ.

DATED: 4TH FEBRUARY, 2003.

ORAL JUDGMENT(PER P.V.HARDAS, J.)

In this Petition, the Petitioners have claimed that they ought to have been granted the benefit of Time Bound Promotional Scale, hereinafter referred to as "T.B.P.S." for the sake of brevity, in the scale of Rs.1640-2900 and have also prayed for quashing the promotion of Respondent Nos.3 and 4 to the post of Assistant Pharmaceutical Chemist.

2. The facts as are necessary for the decision of this Petition are set out hereunder:-

Petitioner No.1 was appointed as Pharmacist by Order dated 17th June, 1982. The Petitioner No.2 was appointed w.e.f. 23rd September, 1982. Petitioner No.3 was appointed by Order dated 27th September, 1982. Petitioner No.4 was appointed w.e.f. 1st January, 1983 and the Petitioner No.5 was appointed w.e.f. 7th January, 1983. It is stated in the Petition, that the Petitioners, at the time of filing of the Petition

were working as Pharmacists in the Goa Medical College. In the seniority list, the Petitioners are placed at serial nos.18, 19, 21, 22 and 23 respectively. The Respondent Nos.3 and 4 are at serial nos.6 and 2 respectively. The Respondent No.3 was appointed on 1st January, 1974 while Respondent No.4 was appointed on 1st January, 1973.

3. The Rules in force at the time of the appointment of the Petitioners contemplated S.S.C. with Diploma in Pharmacy and registration under the Pharmacy Act, 1948 as Pharmacist. Initially, the post was designated as a Compounder and subsequently was re-designated as Pharmacist in the year 1975. In 1990, the Recruitment Rules were framed and the qualifications for the post of Pharmacist continued to be as under the earlier rules. The method of recruitment was by way of direct recruitment. The Time Bound Promotional Scale was introduced for Group 'C' and Group 'D' employees vide Office Memorandum dated 5th July, 1989. Under the said scheme, "T.B.P.S." would be equal to the scale of the next higher post in the cadre/hierarchy and would be recommended by the Department Promotion Committee. An employee to be entitled to the benefit of "T.B.P.S." was required to put at least

12 years of service in the existing post with a qualification that the employee should possess the requisite qualification for the next higher post. In the case of the Petitioners, who were Pharmacists, the next higher post was that of Assistant Pharmaceutical Chemists and as per the relevant Recruitment Rules which were in force then the qualifications for the post of Assistant Pharmaceutical Chemist were the same as that of a Pharmacist.

4. The Government of Goa framed new rules in 1992 for the post of Assistant Pharmaceutical Chemist and the said rules altered the method of recruitment of Assistant Pharmaceutical Chemist by making the post promotional failing which by direct recruitment. The qualifications provided for promotion to the post of Assistant Pharmaceutical Chemist under the new rules was possessing degree in Pharmacy and registration as Pharmacists under the Pharmacy Act, 1948.

5. In terms of "T.B.P.S.", 14 persons from out of the 28 Pharmacists working in the Goa Medical College were granted the benefit of "T.B.P.S." by Order dated 28th September, 1993 w.e.f. 6th

February, 1992 as the said 14 persons had completed 12 years service as Pharmacists before the new rules of 1993 came into force. It is an admitted fact that all the Petitioners completed their 12 years of service and became eligible for the benefit of "T.B.P.S." in 1994 and 1995 i.e. after the new rules relating to the appointment of Assistant Pharmaceutical Chemist came into force. As stated earlier, the new rules provided a degree in Pharmacy to be entitled to be promoted to the post of Assistant Pharmaceutical Chemist along with the condition of having put in the requisite number of years as service in the feeder post of Pharmacist.

6. The grievance of the Petitioners, therefore, is that those 14 employees have been granted "T.B.P.S." benefit in the pay scale of Rs.1640-2900 whereas the Petitioners have been granted "T.B.P.S." scale of Rs.1400-2600. For applicability of "T.B.P.S." to the concerned employees, it is necessary that the employee should have put in at least 12 years of service in the existing post and the employee should possess the requisite qualifications prescribed for the next higher post. Therefore, the scheme contemplated that on the date the employee becomes eligible for

the benefit of "T.B.P.S.", after having put in 12 years of service, he should possess the requisite qualifications as are prescribed for the next higher post. Therefore, an employee must on the date he becomes eligible for "T.B.P.S." possess the requisite qualifications for the next higher post. In the present case, admittedly, the Petitioners who became eligible for "T.B.P.S." after the new rules prescribing qualifications for the post of Assistant Pharmaceutical Chemist came into force did not possess the requisite qualifications for being appointed as Assistant Pharmaceutical Chemist. The new rules required a degree in Pharmacy. The Petitioners were only S.S.C. with a Diploma in Pharmacy. The 14 persons who had been granted the benefit of "T.B.P.S." before the new rules came into force had the requisite qualifications of the next higher post as per the rules existing when they became eligible. In the Affidavit on behalf of the Government, it is stated that the Petitioners have been granted "T.B.P.S." as per Government Order dated 22nd March, 2001 from Rs.1350-2200 to Rs.1400-2600.

7. Mrs. A. A. Agni, learned Counsel appearing on behalf of the Petitioners has relied on

the Judgment of the Hon'ble Apex Court in **Mew Ram Kanojia** v. **All India Institutions of Medical Sciences** reported in Volume 10 of Supreme Court Service Rulings page 345 to urge before us that the doctrine of "Equal Pay for Equal Work" would apply. According to her, the Petitioners are performing the same duties as that of the 14 other persons who have been granted "T.B.P.S.". Though, the Petitioners and the said 14 persons perform the said duties, they are given different pay scales. She has also relied for the same proposition on the Judgment of the Hon'ble Apex Court in **State of U.P. and others** v. **J.P.Chaurasia and others** reported in AIR 1989(1) SCC 121.

8. It is true that there is difference in the ultimate salary of the Petitioners and the 14 other persons who are performing the same duties. This is as a result of the extension of the benefit of "T.B.P.S.". The Petitioners were not entitled to the "T.B.P.S." scale as was applicable to the 14 other persons as on the date the Petitioners became eligible for the same, they did not possess the requisite qualifications of the next higher post. The aforesaid Judgments of the Hon'ble Apex Court are inapplicable to the facts of the present case.

There is difference in the ultimate salary because of the different benefits which have been extended to the Petitioners and the 14 other persons. The Petitioners and the 14 other persons do not stand on the same platform and thus, there is no discrimination in treating the Petitioners differently. Therefore, in our considered opinion, there is absolutely no force in the contention of the Petitioners that they were entitled to for "T.B.P.S." in the new scale of Rs,1400-2600.

9. In respect of the promotion of Respondent Nos.3 and 4, it is an admitted fact that Respondent Nos.3 and 4 are seniors to the Petitioners. The Government in its Affidavit has clearly stated that since there were many Pharmacists in the Goa Medical College working for a long time having no promotional avenues, the proposal was under examination by the Personnel Department. In the meantime, there were three posts of Assistant Pharmaceutical Chemists in Goa Medical College. The Goa Public Service Commission, therefore, requested to recommend the waiting list candidates for the vacant posts. The two posts were to be filled by promotion. As per seniority, Respondent Nos.3 and 4 were promoted by granting relaxation in respect of

educational qualifications. The names of Respondent Nos.3 and 4 had been recommended by the Departmental Promotion Committee after assessing the Confidential Reports of the Respondents. Thus, the Petitioners cannot claim that in respect of grant of "T.B.P.S." also their educational qualifications ought to have been relaxed by the Government. The promotion of Respondent Nos.3 and 4 cannot be challenged by the Petitioners as they do not fall within the zone of consideration for the promotional post as Respondent Nos.3 and 4 are seniors to the Petitioners and the Petitioners also do not claim that there are other posts to which they are entitled to be promoted in the order of seniority. Thus, there is absolutely no merit in the challenge to,the promotion of Respondent Nos.3 and 4 and the challenge in that behalf must fail.

10. In the result, therefore, Writ Petition No.373 of 1999 is dismissed with no order as to costs. Rule discharged.

D. G. DESHPANDE, J.

P. V. HARDAS, J,